



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,121	11/25/2003	Kang Soo Seo	1740-000076/US	4390
30593 7590. 11/15/2007 HARNES, DICKEY & PIERCE, P.L.C. P.O. BOX 8910 RESTON, VA 20195			EXAMINER DANG, HUNG Q	
			ART UNIT 2621	PAPER NUMBER
			MAIL DATE 11/15/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/720,121	Applicant(s) SEO ET AL.	
	Examiner Hung Q. Dang	Art Unit 2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Nonfunctional descriptive material that does not constitute a statutory process, machine, manufacture or composition of matter and should be rejected under 35 U.S.C. Sec. 101. Certain types of descriptive material, such as music, literature, art, photographs, and mere arrangements or compilations of facts or data, without any functional interrelationship is not a process, machine, manufacture or composition of matter. USPTO personnel should be prudent in applying the foregoing guidance. Nonfunctional descriptive material may be claimed in combination with other functional descriptive multimedia material on a computer-readable medium to provide the necessary functional and structural interrelationship to satisfy the requirements of 35 U.S.C. Sec. 101. The presence of the claimed nonfunctional descriptive material is not necessarily determinative of nonstatutory subject matter. For example, a computer that recognizes a particular grouping of musical notes read from memory and upon recognizing that particular sequence, causes another defined series of notes to be played, defines a functional interrelationship among that data and the computing processes performed when utilizing that data, and as such is statutory because it implements a statutory process.

Claims 11-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows.

Claims 11-16 recite a data stream which does not impart functionality to a computer or computing device, and is thus considered nonfunctional descriptive material. Such nonfunctional descriptive material, in the absence of a functional interrelationship with a computer, does not constitute a statutory process, machine, manufacture or composition of matter and is thus non-statutory per se.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claims 11-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows.

Claims 11-16 define a data stream, which, as described above, is non-functional descriptive material. Further, the data stream is recorded on a recording medium. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "when functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized" – Guidelines Annex IV). That is, the scope of the presently claimed control information can range from paper on which the program is written, to a program simply contemplated and memorized by a

person. The examiner suggests amending the claim to embody the program on "computer-readable medium" or equivalent in order to make the claim statutory. Any amendment to the claim would be commensurate with its corresponding disclosure.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 and 11-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamane et al. (US Patent 5,784,528).

Regarding claim 1, Yamane et al. disclose a method for recording a data stream having multiple reproduction paths on a recording medium (Fig. 21; column 29, lines 37-42), comprising: checking whether total bit rate of a data stream section pertaining to one path among multiple reproduction paths is lower than a minimum bit rate and, if lower, assigning an additional bit rate to the data stream section such that the TBR of the data stream section is not lower than said minimum bit rate (column 27, lines 49-54; column 34, lines 50-55; column 35, lines 42-55; column 39, lines 23-67); and recording a multi-path data stream including the data stream section on a recording medium (Fig. 21; column 29, lines 37-42).

Regarding claim 2, Yamane et al. also disclose said minimum bit rate is determined to a value enough to prevent buffer underrun during changes in

reproduction path (column 27, lines 49-54; column 34, lines 50-55; column 35, lines 42-55; column 39, lines 23-67).

Regarding claim 3, Yamane et al. also disclose said data stream section is a stream range referred by a plurality of entry points, each entry point pointing to an interval of said data stream section (column 26, lines 8-22; column 28, lines 44-50; column 39, lines 32-40).

Regarding claim 4, Yamane et al. also disclose the additional bit rate is assigned to a stream interval pertaining to only one entry point (column 39, lines 55-67).

Regarding claim 5, Yamane et al. also disclose the additional bit rate is distributed to a plurality of stream intervals within said data stream section (column 26, lines 8-22; column 28, lines 44-50; column 39, lines 32-40, 55-67).

Regarding claim 6, Yamane et al. also disclose said data stream section whose TBR is to be checked is overlapped with another adjacent data stream section in such a manner that at least one entry point is commonly owned by said two data stream sections (column 26, lines 8-22; column 28, lines 44-50; column 39, lines 32-40; column 38, lines 13-31; Fig. 31; Fig. 33).

Regarding claim 7, Yamane et al. also disclose a jump for path change during reproduction of the recorded multi-path data stream is allowed on every entry point (column 39, lines 5-40; Fig. 40).

Regarding claim 8, Yamane et al. also disclose said data stream section whose TBR is to be checked is not overlapped with another adjacent data stream section (Fig. 40; column 39, lines 32-40).

Regarding claim 9, Yamane et al. also disclose a jump for path change during reproduction of the recorded multi-path data stream is allowed on every data stream section not entry point (Fig. 35; Fig. 36).

Claim 11 is rejected for the same reason as discussed in claims 1 and 2 above.

Claim 12 is rejected for the same reason as discussed in claim 3 above.

Claim 13 is rejected for the same reason as discussed in claim 6 above.

Claim 14 is rejected for the same reason as discussed in claim 7 above.

Claim 15 is rejected for the same reason as discussed in claim 8 above.

Claim 16 is rejected for the same reason as discussed in claim 9 above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamane et al. (US Patent 5,784,528) as applied to claims 1-9 and 11-16 above, and further in view of Fujiwara et al. (US Patent 6,683,989).

Regarding claim 10, see the teachings of Yamane et al. as discussed in claim 1 above. However, Yamane et al. do not disclose said minimum bit rate is at least 24 Mbps.

Fujiwara et al. disclose a video stream with a bit rate of 24 Mbps (column 2 lines

One of ordinary skill in the art at the time of the invention was made would have been motivated the bit rate of 24 Mbps disclosed by Fujiwara et al. into the method disclosed by Yamane et al. for high-definition video applications.

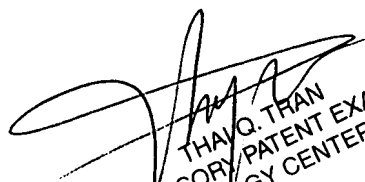
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hung Q. Dang whose telephone number is 571-270-1116. The examiner can normally be reached on M-Th:7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran can be reached on 571-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hung Dang
Patent Examiner



THAI Q. TRAN
SUPERVISORY PATENT EXAMINER
ELECTRONIC BUSINESS CENTER 2600